



NON-COMPETE AND CONFIDENTIALITY AGREEMENT

1. NONSOLICITATION. The undersigned Recipient agrees that during Recipient's employment and/or other relationship with Nacio Systems, Inc. ("Nacio") and for one (1) year thereafter (the "Non-solicitation Period"), the Recipient will not, directly or indirectly, through any person, firm, corporation or other entity, solicit, induce, recruit or encourage any of Nacio's employees or consultants to terminate their relationship with Nacio, or take away such employees or consultants, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of Nacio, either for Recipient or for any other person or entity. Further, during the Non-solicitation Period, Recipient shall not solicit any of Nacio's clients or customers that are known to Recipient and/or with whom Recipient became acquainted during the period of Recipient's employment and/or other relationship with Nacio, with respect to any business, products or services that are competitive to the products or services offered by Nacio or under development by Nacio as of the date of termination of Recipient's relationship with Nacio. Nacio and the Recipient agree that Nacio's business is national in scope and is highly competitive. The Recipient therefore acknowledges that the scope of the foregoing covenant is fair and reasonable. In the event that any provisions in this Section 1 are deemed to be unenforceable by a court or arbitrator of competent jurisdiction, Recipient agrees to such reduction of the scope, time period and/or territory applicable to this covenant as the court or arbitrator deems reasonable and enforceable. In the event Recipient violates this Section 1, then the Non-solicitation Period will be extended for a period of time equal to the pendency of any legal proceedings arising from such violation, including appeals.

2. CONFIDENTIAL INFORMATION "Confidential Information" shall include, but is not limited to: (a) any and all non-public information disclosed or otherwise provided to Nacio from its clients, prospective clients and other third parties; (b) business and financial plans or forecasts, fee arrangements, sources of supply, marketing information and strategies, non-public financial information, methods of doing business, clients and client lists, and any other past, present, or future business trade secrets of Nacio and/or its clients or prospective clients; (c) technical data or know-how, including but not limited to diagrams, product and service development plans, charts, designs, inventions, techniques, formulas, drawings, specifications, processes, models, data, data bases, flow charts, software (source code and object code), reports, documentation, technology, memoranda and any other technical information relating to the products, business, or technology of Nacio and/or its clients and/or prospective clients; (d) grant proposal forms; (e) any and all non-public information concerning any investigations, settlement negotiations, litigation, mediation, arbitration and other proceedings in which Nacio is involved; and (f) any documents or copies made in any form now known or hereafter devised based upon or relating to any information set forth above in (a) through (e), inclusive, of this Section 1. Confidential Information shall include information communicated orally, in writing, or in any form now known or hereinafter devised, whether before, during or after Recipient's employment and/or other relationship with Nacio.

3. **EXCEPTIONS** This Agreement imposes no obligation upon Recipient with respect to Confidential Information which Recipient proves, by clear and convincing evidence: (a) was rightfully in Recipient's possession before receipt during the course of Recipient's employment with Nacio; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received from a third party without a duty of confidentiality; (d) is independently developed by Recipient or a third party without use of the Confidential Information disclosed hereunder; or (e) is disclosed by Recipient with Nacio's prior written approval.

4. **RESTRICTIONS/OBLIGATIONS** Recipient shall protect all disclosed Confidential Information by using the highest degree of care to prevent the unauthorized use, dissemination, disclosure or publication of the Confidential Information. Recipient agrees to limit access to any Confidential Information only to persons with a bona fide need to know such information and only as expressly authorized in writing by Nacio. Recipient shall use the Confidential Information only to the extent permitted by this Agreement and solely for the purpose of performing work within the course and scope of Recipient's employment and/or other relationship with Nacio and for Nacio's benefit. Recipient further agrees not to reverse engineer, decompile, or disassemble any software constituting Confidential Information and not to directly or indirectly export or transmit any Confidential Information to any country to which such export or transmission is restricted by treaty, regulation, or statute.

Recipient shall immediately notify Nacio upon discovery of any unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement and Recipient shall cooperate in every reasonable way to assist in regaining possession of the Confidential Information and prevent its further unauthorized use or disclosure. Recipient agrees to separate all Confidential Information from the confidential materials of others to prevent commingling. In the event that Confidential Information is required to be disclosed pursuant to any court or government action or regulation, Recipient shall: (1) promptly notify Nacio of such requirement in order to allow Nacio to assert whatever exclusions, exemptions, or protective measures that may be available to it under such action or regulation, (2) use diligent efforts to limit disclosure and to obtain confidential treatment or a protective order, and (3) allow Nacio to participate in the disclosure proceeding.

5. **TERMINATION / SURVIVAL** The terms of this Agreement as they apply to any Confidential Information shall remain in full force and effect following termination of this Agreement for any reason and/or if Recipient is no longer in the employ of or no longer has a relationship with Nacio.

6. **OWNERSHIP / RETURN OF DOCUMENTS** As between Recipient and Nacio, all Confidential Information shall remain the property of Nacio. Immediately upon the earlier of (i) receipt of written demand from Nacio, (ii) the expiration or termination of this Agreement, or (iii) the termination of Recipient's employment with Nacio, Recipient shall discontinue all use of the Confidential Information provided to Recipient, return (or, at Nacio's request, destroy) all Confidential Information disclosed to Recipient, and certify in writing, under penalty of perjury, that all Confidential Information has been returned (or, if applicable, destroyed). Under this Agreement, Recipient acquires no intellectual property rights, including but not limited to patents, trademarks or copyrights.

7. **EQUITABLE REMEDIES / VENUE** Recipient agrees that it would be impossible or inadequate to measure and calculate all of Nacio's damages from any breach of the covenants set forth in this Agreement, and that money damages therefore would be an inadequate complete remedy for any such breach. Accordingly, Recipient agrees that if Recipient breaches any of such covenants, Nacio shall, in addition to any other available right or remedy, be entitled to obtain a temporary restraining order by ex parte application and thereafter request an injunction from a court of competent jurisdiction, within the venues specified in this Section 7 below, restraining such breach or threatened breach and to specific performance of any such provision of this Agreement. Recipient further agrees that no bond or other security shall be required in obtaining such equitable relief and the Recipient hereby consents to the issuance of such injunction and to the ordering of specific performance. This Agreement shall be exclusively governed by, construed and enforced in all respects in accordance with the laws of the State of California without regard to its conflict of laws rules. Recipient agrees that venue for any and all disputes hereunder, or action on any obligation hereunder, will be exclusively brought in an appropriate state court in Marin County, California or in the United States District Court for the Northern District of California in San Francisco, California, and Recipient irrevocably consents to the jurisdiction of such courts for any dispute hereunder or action on any obligation hereunder.

RECIPIENT

Recipient Signature: _____

Print Name: _____

Address: _____

Date of Hire: _____



NON DISCLOSURE AGREEMENT

_____, hereinafter referred to as **RECIPIENT**, has requested information from NACIO Systems, hereinafter referred to as NACIO Systems

WHEREAS, NACIO Systems and RECIPIENT intend to enter into discussions for the purpose of determining the feasibility of a business arrangement between the parties; and

WHEREAS in the course of, or incidental to, such discussions NACIO Systems will be providing RECIPIENT with Confidential Information (as defined herein); and

WHEREAS, the parties agree that nothing contained herein shall constitute a commitment of either party to the other for a business arrangement except as such arrangement are set forth in writing by the parties;

THEREFORE RECIPIENT agrees to accept all Confidential Information subject to the following terms and conditions:

1. **Definitions**

"Confidential Information" shall mean any and all information (whether written or oral), furnished by NACIO Systems or its agents to RECIPIENT and which is either marked "Confidential" or contains a similar proprietary or confidential marking at the time of conveyance. "Reasonable Care" shall mean the same degree of care exercised by RECIPIENT with respect to its own information of the same nature.

2. **Incorporation of Confidential Information In Other Documents**

In the event that Confidential Information shall be incorporated into or reflected in other documents, such documents shall be deemed Confidential Information subject to the terms of this Agreement.

3. **Non-Disclosure**

RECIPIENT shall use reasonable care for a period of three (3) years from the effective date of this Agreement to maintain the confidentiality of such Confidential Information and to limit its disclosure to only such of its directors, officers, employees and agents as have a need to know such Confidential. RECIPIENT shall inform such persons of the terms of this Agreement and the confidential nature of such information and shall be responsible for the compliance of any such persons with the provisions of this Agreement. RECIPIENT shall not copy any Confidential Information for any purpose other than as permitted hereby and required to an evaluation.

4. **Equitable Relief**

Both parties agree that money damages would not be a sufficient remedy for any breach of this Agreement and that NACIO Systems shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.

5. **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of California. The venue for enforcement of this Agreement is Marin County.

RECIPIENT

By: _____

Date: _____

Print: _____

Address: _____

Title: _____

***Please fax back to (415) 884-7504**